

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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In re:

REZULIN PRODUCTS LIABILITY
LITIGATION (MDL No. 1348)

MASTER FILE

00 Civ. 2843 (LAK)

This Document Relates to: All Cases

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ORDER NO. 1
(Initial Case Management Order)

LEWIS A. KAPLAN, *District Judge.*

It appearing that the cases listed on Attachment A, which have been filed in or transferred to this Court pursuant to 28 U.S.C. § 1407, merit special attention as complex litigation, it is hereby

ORDERED, as follows:

1 Filing; Service

1.1 Filing of this Order. A copy of this Order shall be filed in each case listed in Attachment A. In cases subsequently filed, a copy will be provided by the Clerk to each plaintiff at the time of filing the complaint and will be served with the complaint on any defendant not previously a party in these cases. In cases subsequently removed or transferred to this Court, a copy will be provided by the Clerk to each new party upon removal or transfer.

1.2 Acceptable Service. To eliminate disputes over service of process and reduce the expense of such service, Warner Lambert Company and Pfizer Inc. (including their unincorporated divisions) have agreed to accept service of process in these cases

(without, however, waiving any objections to personal jurisdiction or venue) if a copy of the summons and complaint is sent by certified mail, return receipt requested to:

Glen J. Pogust
Kaye, Scholer, Fierman, Hays & Handler, LLP
425 Park Avenue
New York, NY 10022-3598

The agreement by those defendants to accept service of process in this manner applies to any case involving Rezulin claims filed in any federal district court or in any state court of general jurisdiction. Such service shall be made in accordance with Fed. R. Civ. P. 4(d) and, pursuant to Fed. R. Civ. P. 4(d)(3), defendants shall not be required to serve an answer to any complaint served in this manner until 60 days after return of the waiver of service.

1.3 Preservation of Records. Each party shall preserve all documents and other records containing information potentially relevant to the subject matter of this litigation. Each party shall preserve also any physical evidence or potential evidence and shall not conduct any testing that alters the physical evidence without notifying opposing counsel and, unless counsel stipulate to the test, without obtaining the Court's permission to conduct the test. Subject to further order of the Court, parties may continue routine erasures of computerized data pursuant to existing programs, but they shall (1) immediately notify opposing counsel about such programs and (2) preserve any printouts of such data. Requests for relief from this directive will receive prompt attention from the Court.

1.4 Preliminary Information. To the extent not already presented, counsel will submit

to the undersigned *brief* written statements setting forth the information set forth below. These statements will not be filed with the Clerk, will not be binding, will not waive any claims or defenses, and may not be offered in evidence against a party in later proceedings. To the extent feasible, and to minimize the number of statements submitted to the Court that contain duplicate information, the statements of parties with similar interests should be consolidated and submitted as a single document.

1.4.1 List of Affiliated Companies and Consent. To assist the court and other counsel in identifying any problems of recusal or disqualification, the submitted information shall include a list of all companies affiliated with the parties and of all counsel associated in the litigation.

1.4.2 List of Pending Motions. The statements should briefly summarize the nature of pending motions and identify the cases in which they are pending.

1.4.3 List of Pending State Cases. The statements shall list, to the extent known, the captions, docket numbers, venues, and judges presiding over similar cases in state courts.

2. Interim Measures. Until otherwise ordered by the Court:

2.1. Pretrial Consolidation. The cases listed on Attachment A are consolidated for pretrial proceedings. This order does not constitute a determination that these actions shall be consolidated for trial, nor does it have the effect of making any entity a party to an action in which it has not been joined and served in accordance with the Federal Rules of Civil Procedure.

2.1.1 Master Docket and File. The Clerk will maintain a master docket and case file under the style “In re Rezulin Product Liability Litigation (MDL-1348)” as master file number 00 Civ. 2843. Order, pleadings, motions and other documents bearing a caption similar to that of this Order will, when docketed and filed in the master file, be deemed docketed and filed in each individual case to the extent applicable and ordinarily will not be docketed separately or physically filed in such individual cases.

2.1.2 Captions; Separate Filing. Orders, pleadings, motions and other documents will bear a caption similar to that of this Order. If generally applicable to all consolidated actions, they shall include in the caption the notation that they relate to “All Cases” and shall be filed and docketed only in the master file. Documents intended to apply only to particular cases will indicate in their caption the number of the case(s) to which they apply, and extra copies shall be provided to the Clerk to facilitate filing and docketing both in the master case file and in each of the specified individual case files.

2.2 Pleadings. Each defendant is granted an extension of time for responding by motion or answer to the complaints to and including November 10, 2000.

2.3 Motions.

2.3.1 No motion shall be filed under Rule 11, Rule 37, or Rule 56 without the movant first having sought a premotion conference with the Court.

2.3.2 No motion (other than under Rule 12) shall be filed unless it includes a certification that the movant has conferred with opposing parties and made a

good faith effort to resolve the matter without court action.

2.3.3 The time for the response or reply to any motion whether made in this court or in any transferor court is extended until a date or dates established by an appropriate scheduling order.

2.4 Discovery.

2.4.1 Non-filing of Discovery Documents. Pursuant to Fed. R. Civ. P. 5(d), discovery requests and responses will not be filed with the court except when specifically so ordered by the court or to the extent needed in connection with a motion.

2.4.2 Pending and New Discovery. Pending the development of a fair and efficient schedule, all outstanding discovery proceedings are suspended until further order of this Court, and no further discovery shall be initiated. This directive does not (A) preclude informal discovery regarding the identification and location of relevant documents and witnesses; (B) preclude parties from stipulating to the conduct of a deposition that already has been scheduled; (C) prevent a party from voluntarily responding to an outstanding discovery request under Fed. R. Civ. P. 33, 34, or 36; or (D) authorize a party to suspend its efforts in gathering information needed to respond to a request under Fed. R. Civ. P. 33, 34, or 36. Relief from this stay may be granted for good cause shown, such as the ill health of a proposed deponent.

2.4.3 Document Depository. Defendant Warner-Lambert Company and each of its affiliated entities shall continue to collect and review all documents relevant

to the development, testing, marketing, sale and use of Rezulin for the purpose of creating a document depository. It is intended that this document depository will be made available to all litigants in any federal or state case involving Rezulin-related claims.

2.4.4 Deadlines. Orders issued by transferor courts imposing dates for initiation or completion of discovery are vacated.

2.5 Later Cases. The interim orders contained in this paragraph 2, including pretrial consolidation, shall apply automatically to actions later instituted in or removed or transferred to this Court (including cases transferred for pretrial purposes under 28 U.S.C. § 1407) that involve claims relating to Rezulin.

3. Organization of Plaintiffs' Counsel

3.1 Executive Committee

3.1.1 There shall be an Executive Committee consisting of:

Charles A. Mathis, Jr.
Middleton, Mathis, Adams & Tate, PC
Herman, Middleton, Casey & Kitchens LLP
Suite 1400 The Equitable Building
100 Peachtree Street
Atlanta, GA 30303
Telephone: (404) 523-5000
Fax: (404)-527-9894

Arnold Levin
Levin, Fishbein, Sedran & Berman
Suite 500, 510 Walnut Street
Philadelphia, PA 19106-3697
Telephone: (215) 592-1500
Fax: (215) 592-4663

Ramon Rossi Lopez
Lopez, Hodes, Restaino, Milman, Skikos, Polos
450 Newport Center Drive, 2nd Floor
Newport Beach, CA 92600
Telephone (949) 640-8222
Fax: (949) 640-8294

Melvyn I. Weiss
Milberg Weiss Bershad Hynes & Lerach LLP
One Pennsylvania Plaza
New York, NY 10019
Telephone: (212) 594-5300
Fax: (212) 868-1229

- 3.1.2** Charles A. Mathis, Jr. shall be Chairman of the Executive Committee.
- 3.1.3** Plaintiffs' Executive Committee shall be responsible for coordinating the activities of plaintiffs during pretrial proceedings and shall:
- (a) determine (after such consultation with other members of Plaintiffs' Steering Committee and other co-counsel as may be appropriate) and present (in briefs, oral argument, or such other fashion as may be appropriate, personally or by a designee) to the Court and opposing parties the position of the plaintiffs on matters arising during pretrial proceedings;
 - (b) coordinate the initiation and conduct of discovery on behalf of plaintiffs consistent with the requirements of Fed. R. Civ. P. 26(b)(1)

and (2), and (g), including the preparation of joint interrogatories and requests for production of documents and the examination of witnesses in depositions;

- (c) conduct settlement negotiations on behalf of plaintiffs, but not enter binding agreements except as may be authorized by the Court;
- (d) delegate specific tasks to other counsel in a manner to ensure that pretrial preparation for the plaintiffs is conducted effectively, efficiently, and economically;
- (e) enter into stipulations, with opposing counsel, necessary for the conduct of the litigation;
- (f) prepare and distribute to the parties periodic status reports;
- (g) maintain adequate time and disbursement records covering services as Executive Committee members;
- (h) monitor the activities of co-counsel to ensure that schedules are met and unnecessary expenditures or time and funds are avoided; and
- (i) perform such other duties as may be incidental to proper coordination of plaintiffs' pretrial activities or authorized by further order of the Court.

3.1.4 No discovery or other actions or work in this litigation shall be undertaken on behalf of any plaintiff except at the direction or with permission of the

Chairman and/or Executive Committee, provided, however, that any attorney aggrieved by any refusal of permission may seek review of such refusal by the Court.

3.2 Plaintiffs' Liaison Counsel

3.2.1 Plaintiffs' Liaison Counsel shall be:

Elizabeth J. Cabraser
Lieff, Cabraser, Heimann & Bernstein, LLP
780 Third Avenue, 48th Floor
New York, NY 10017
Telephone: (212) 355-9500
Fax: (212) 355-9592

3.2.2 Plaintiffs' Liaison Counsel shall:

- a. maintain and distribute to co-counsel and to Defendants' Liaison Counsel an up-to-date service list;
- b. receive and, as appropriate, distribute to co-counsel orders from the Court and documents from opposing parties and counsel;
- c. maintain and make available to co-counsel at reasonable hours a complete file of all documents served by or upon each party except such documents as may be available at a document depository.

3.3 Plaintiffs' Steering Committee

3.3.1 Plaintiffs' Steering Committee ("PSC") shall be composed of Plaintiffs' Executive Committee, Plaintiffs Liaison Counsel and:

Stanley M. Chesley
Waite Schneider Bayless & Chesley Co. LPA
Central Trust Tower
Fourth & Vine Streets, Suite 1513
Cincinnati, OH 45202
Telephone: (513) 621-0267
Fax: (513) 381-2375; 621-0262

John J. Cummings, III
Cummings, Cummings 7 Dudenhefer
416 Gravier Street
New Orleans, LA 70130
Telephone: (504) 586-0000
Fax: (504) 522-8423

Robert J. Gordon
Weitz & Luxenberg, P.C.
180 Maiden Lane
New York, NY 10038
Telephone: (212) 558-5500
Fax: (212) 558-5506

James F. Green
Ashcroft 7 Gerel, LLP
2000 L. Street, N.W.
Suite 400
Washington, DC 20036
Telephone: (202) 416-6308
Fax: (202) 416-6324

J. Michael Papantonio
Levin, Middlebrooks, Thomas, Mitchell,
Behsner, Proctor 7 papantonio, P.A.
316 South Haylen Street
Pensacola, FL 32501
Telephone: (850) 435-7000; (888) 435-7001
Fax: (850) 435-7020

Christopher M. Placitella
 Wilentz, Goldman & Spitzer
 90 Woodbridge Center Drive
 Suite 900, Box 10
 Woodbridge, NJ 07095
 Telephone: (732) 636-8000
 Fax: (732) 855-6117

Mark P. Robinson, Jr.
 Robinson, Calcagnie & Robinson
 620 Newport Center Drive, 7th Floor
 Newport Beach, CA 92660
 Telephone: (949) 720-1288
 Fax: (949) 720-1292

Thomas Dewitt Rogers, III
 Ness Motley Loadholt Richardson & Poole
 151 Meeting Street, Suite 600
 Charleston, SC 29402
 Telephone: (803) 720-9000
 Fax: (803) 577-7513

Arthur Sherman
 Sherman Salkow Petoyan & Weber
 9454 Wilshire Blvd., Ste. 550
 Los Angeles, CA 90212
 Telephone: (310) 275-5077; (800) 228-1738
 Fax: (310) 276-5871

Gene Locks
 Greitzer & Locks LLC
 1500 Walnut Street, 20th Floor
 Philadelphia, PA 19102
 Telephone: (215) 893-0100
 Fax: 215) 985-2960

3.3.2 The members of PSC shall from time to time consult with Plaintiffs' Executive Committee in coordinating the plaintiffs pretrial activities and in planning for trial.

3.4 Pending Motions. All pending motions for appointment to the Executive

Committee and PSC, to the extent they seek relief inconsistent with the structure here established, are denied.

4. Compensation and Time and Expense Records

4.1 Record Keeping. Counsel who anticipate seeking an award of attorneys' fees and reimbursement of expenditures from the Court shall comply with the directives contained in The Manual for Complex Litigation, Third § 41.32 regarding the maintenance and filing of contemporaneous records reflecting the services performed and the expenses incurred and the "Guidelines for MDL 1348 Plaintiffs' Counsel Common Benefit Time and Expense Reporting" attached as Attachment B.

5. Service of Documents

5.1 Orders. A copy of each order will be provided to Plaintiffs' Liaison Counsel and counsel for Warner Lambert Company for distribution as appropriate to other counsel and parties.

5.2 Pleadings, Motions, and Other Documents. Plaintiffs' Liaison Counsel and counsel for Warner Lambert Company will be provided with sufficient copies of each pleading, motion, or other document filed by a party. Pursuant to Fed. R. Civ. P. 5, service on Plaintiffs' Liaison Counsel constitutes service on other attorneys and parties for whom Plaintiffs' Liaison Counsel is acting, such service being deemed effective seven days after service on Plaintiffs' Liaison Counsel.

6. Formulation of Schedule for Pretrial Proceedings

6.1 Submission of Proposed Schedule

6.1.1 The Court intends to fix at or promptly after the next pretrial conference a date by which all discovery and other pretrial proceedings in these cases, including discovery with respect to individual plaintiffs, will be concluded and the cases ready for trial and/or disposition by motion. Plaintiffs' Executive Committee and defendants' counsel shall meet and confer with a view toward reaching agreement on a comprehensive schedule to accomplish this goal at the earliest practicable time. The parties shall submit their agreed plan or, failing agreement, their respective plans in writing on or before October 30, 2000. In the event the parties, or any of them, seek a period longer than one year for the accomplishment of this goal, the submission(s) shall contain detailed justification for any such extended period.

6.1.2 The Court hopes to arrive at a comprehensive schedule that will govern these cases and, if the state court judges see fit, cases pending in state courts. Accordingly, Plaintiffs' Executive Committee and defendants' counsel shall coordinate with judges and counsel in state court actions with a view to achieving that goal.

6.2 Next Pretrial Conference. The next pretrial conference will be held on November 6, 2000 at 9:30 a.m. in Courtroom 12D at which time the Court will address the proposed schedule and such other matters as may be useful.

7. Class Actions

7.1 Consolidated Class Action Complaint. A single consolidated amended class action complaint shall be served and filed no later than October 30, 2000.

7.2 Class Action Motion. The proposed schedule for pretrial proceedings (*supra*, § 6.1, shall include a schedule for litigation of the class certification issue.

8. Court Appointed Experts

Any proposal for the appointment of experts by the Court shall be served and filed no later than October 25, 2000. Any response thereto shall be served and filed no later than October 30, 2000.

9. Electronic Means of Aiding Discovery and Pretrial Proceedings

Plaintiffs' Executive Committee and defendants' counsel shall meet and confer with a view toward reaching agreement on electronic means of storing and retrieving documents produced in discovery in these actions and of making available to all counsel in electronic form pleadings and other documents filed in these actions. Any such system shall be usable or readily adaptable for use in the state court actions. The parties shall submit a written report on their efforts on or before October 30, 2000.

10. Court Web Site

The undersigned is participating in the Courtweb project, which is in limited use in this and at least one other district court. All or substantially all orders entered in these cases will be available on the Court's public Web site (<www.nysd.uscourts.gov>) at approximately the time they are filed either in summary form or in PDF format. Among the features of the site is a "Court Watch" system which provides electronic notification to registrants of the entry of orders in cases in respect of which they request such notification. At present, the system is available without charge, although no assurance can be given that charges will not be imposed in the future.

9. Reference to Magistrate Judge

This case is referred to Magistrate Judge Andrew J. Peck solely for the purpose of acting on discovery matters when the undersigned is not available.

Dated: October 16, 2000

Lewis A. Kaplan
United States District Judge